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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/604,742 | 08/14/2003 | Wilhelm Geis | A91717 | 1741 |

30008 7590 11/17/2005

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| EXAMINER |
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DOVE, TRACY MAE

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| ART UNIT | PAPER NUMBER |
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1745

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|-------------------------------|-----------------------------|--|
| Office Action Summary | Application No. 10/604,742 | Applicant(s) GEIS ET AL. | |
| | Examiner Tracy Dove | Art Unit 1745 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to the communication filed on 9/2/05. Applicant's arguments have been considered, but are not persuasive. Claims 1-3 and 5-10 are pending. This Action is made FINAL, as necessitated by amendment.

Claims Analysis

Claims 1 and 10 recite "for an electric power tool that comprises a tool housing with an electric motor arranged therein and a handle connected to the tool housing", which is not given patentable weight because it is an intended use limitation. All limitations of the claimed invention that recite elements of the electric power tool are not given patentable weight because the claims recite "A battery pack".

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 and 5-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 and 10 recite "a widened support surface". It is unclear how the support surface is widened and what the support surface is wider than.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 recites "the individual battery cells...are arranged parallel to the longitudinal direction...sequentially behind one another in at least one row...wherein at least one of the individual battery cells of each of the at least one row...is displaced laterally outwardly

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relative to the longitudinal center axis". Claim 10 then further recites "wherein two of the individual battery cells are positioned adjacent to one another in the transverse direction within the displaced row". It is unclear how the two cells from a single row are "adjacent" in a transverse direction if they are "displaced laterally outwardly".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 7, 8 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by White et al., US 6,326,101.

White teaches a battery pack with opposing walls, a plurality of cells disposed in the housing, at least two terminals electrically connected to the cells and a latching mechanism disposed on each opposing wall for latching the battery pack to a cordless device (abstract). Figures 4-7 show a battery pack 100 having a housing 11A with the latching mechanism (first housing) and cells 12 within the housing 11A. The battery pack has a cover 15 (second housing). Figure 6 shows a longitudinal center axis "Z" and a battery pack having two ends. Figure 6 shows two parallel rows of cells arranged in parallel with "Z" wherein the first and last individual battery cells of the two rows are positioned at the respective ends of the housing. At least one cell in each row is displaced laterally outwardly relative to the longitudinal center axis "Z". Specifically, White shows two columns of cells having three cells per column in the

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direction of axis "Y". The first and third cells in each column are the cells that are "displaced laterally outwardly. The middle cell in each column is equivalent to the "free space cell" of the instant invention.

Thus the claims are anticipated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over White et al., US 6,326,101.

White teaches a battery pack with opposing walls, a plurality of cells disposed in the housing, at least two terminals electrically connected to the cells and a latching mechanism disposed on each opposing wall for latching the battery pack to a cordless device (abstract). Figures 4-7 show a battery pack 100 having a housing 11A with the latching mechanism (first housing) and cells 12 within the housing 11A. The battery pack has a cover 15 (second housing). Figure 6 shows a longitudinal center axis "Z" and a battery pack having two ends. Figure 6 shows two parallel rows of cells arranged in parallel with "Z" wherein the first and last individual battery cells of the two rows are positioned at the respective ends of the housing. At least one cell in each row is displaced laterally outwardly relative to the longitudinal center axis "Z". Specifically, White shows two columns of cells having three cells per column in the direction of axis "Y". The first and third cells in each column are the cells that are "displaced

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laterally outwardly. The middle cell in each column is equivalent to the “free space cell” of the instant invention. Therefore, the number of cells in the “rows” is twelve with four being displaced.

White does not explicitly state the number of cells contained within the battery pack is twelve with six of the twelve being laterally displaced.

However, the invention as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made because White teaches the number of cells is twelve with four being displaced laterally outwardly (Figure 6). One of skill in the art would have found it obvious to vary the number of cells displaced in the battery pack of White depending on shape requirements of the user and the requirements of the device being powered by the battery pack. Specifically, one of skill would have been motivated to vary the number of displaced cells depending on the positioning of the latching mechanism.

Regarding claim 9, White teach the cells are either nickel-cadmium or nickel-metal hydride battery cells (1:9-19) (identical types of the cells).

Response to Arguments

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tracy Dove whose telephone number is 571-272-1285. The examiner can normally be reached on Monday-Thursday (9:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pat Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



November 3, 2005

TRACY DOVE
PRIMARY EXAMINER